3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

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king (Tugo) had finished his reign, he said, "My son shall be elected!" And he was elected.

35. A Law-suit about Dowry.

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Kɛ́ɲ kɛ̱t jɛ̄ bɛ́ pídò, ka jɛ̄ kɛ́dɔ́, ka jɛ̄ pɛ̄ka peɲ. Ka pān ɛ́ni chóɲ, ka ɖāp y' pɛ̄chò, kine: yā pīdɔ́ káché jám! Kine: káchè jam kúchè yán![1] Kine: yi nūtí kɔ̄pɔ́? Kine: yi mɛn an? Kine: yi wóu. Kɛye yɔt kúchè yán! Kine: kipaŋ̄ kuche yin? Kine: jal tɔ́ɲ amɛn? Kine: jal tɔ́ɲ ɲate. Kine: kwāɲ jām! Ka jame kwân. A, ɲate, yi re a pɛ̄m? ɖɔk paɛ dyer? Ka jɛ̄ kɛ̱ti bɛ góɲ. Ka jɛ̄ kɛ́dɔ́, ka rit e yɔ̈t, ka góɲ góɲ kine: wuo, wɔ́ chāɲi kā ɲál àn. Kine: wu kɔma kwɔf aɲɔ́? Wɔ́ kɔma kwɔfe ɖɔk. Ató, gɔ̄ɲun! Kine: é, wuo, wó bì, cha wɔ́ pyɛ́jé ɛ́n ki kwɔfe ɖɔk, dɛ́ é kyɛ̈t, cha ɖɔk kijɛ̀. A chóɲà jɛ̀, a chóɲ jɛ̀, a kɔ́mà kwɔ́p, a kwāɲ jam, ka ɖɔk pɛ̄ka káché gɛ́n. Ka jɛ̄ yɛ̄yɔ́, jɔ̀k dɔ̄ɲ; dɛ́ chaka kɛr yau. É, arɛ lɔ̄ɲé góɲ. Kine: wa tɔu ya tɛ̄ɲ; dɛ́ ɖɔk kache gɛ́n kújà, dɛ́ nūtí kɔ̄bì. Kɛ́ɲ ɛ́ní ànàn, a bāɲ kyédá. Ka rit e lɔ̄kɔ́ chyɛ̄, kine: yɛ́, kinau, yi ba wéi jàl a kɛr! yi re kɛ̱re ɖɔk tɛ̄rɔ́? Kwɔ́fí rach! kɛ́t, chúdí ki ɖāp! jal, ka yú[2] múch ki ɖɔk abich. Ka e mūjɔ́ ki ɖāp, ka gɔ́ kɛ́lé, ka tyɛɲ pān ɛ́ni chóɲ, kine: yá chúdì ki ɖāp, kɛ́ɲ ɛ́ni anan. Dɔ̈ch! A kɛ́dɛ́, a tyɛ́ni mɔgɔ́, a chwɔl tyɛɲ ɛ́ni, a bɛ̄ɲ, a tyêre ɖāp tɛ̀rè gɛ́n. Ka gɛ yēi chyɛ̀, kine: dɔ̈ch, wá bà wàt. A kɛ̱t gɛ́n, a kɔ̄l ɖɔk, ka ɖāp mɛ̱kè gɛ́n.

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At a certain time the people went to ask for indemnities, they went to the village (where the debtor lived), and sat down. The people of the village assembled. When the man began to ask, "I want indemnities for certain goods," the debtor replied, "I do not know anything about goods (which I owe you.)" The man asked, "Have you not been told?" He replied, "By whom?" The man said, "By your father." The debtor said again, "I do not know of anything concerning debts." The man said, "Why do you not know it?" Then it was asked, "Who is the judge?" The answer was, "That man is judge." He aid, "Count the goods (which you claim from this man)." All the goods were enumerated. The judge said tho the debtor, "Man, why do you deny? Is it not true what he said?" And the people went to bring the matter before the king. They found the king, and the matter was told. They said, "Our lord, we have come with this man." The king asked, "What a palaver do you have?" They answered, "We have a palaver about cattle." "Well," said the king, "tell me!" The accuser said, "Well, our lord, we came to ask him (the debtor) about the matter of the cattle; but he refused; he said, he did not know anything about cattle. So I assembled the people, and when the people were assembled, I talked to him, and enumerated the goods, and the cows (which I said he owed me) were found right; the people consented (to my statement), the old people. He refused again to acknowledge it." After

[1] y is here conditional: "when".
[2] "the place, i. e. the matter, of goods is not known by me".
[3] < yí ý "you will".

3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

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that the king said (turning to the accused one), "Well, now you also tell your talk!" He said, "My father died while I was a little child; but the cows, I do not know anything about them. I was not told; that is the reason, therefore I refused to give them." Then the king gave his judgment thus, "Well, so it is, you are a man who refused (to give what is due); why did you refuse to give the people their cows? Your matter is bad. Go, and pay a girl as amends, and you (turning to the accuser), man, give him five cows!" The debtor gave the girl, he brought her to the village (of the accuser). When the people of the village had assembled, he (the accuser) said, "I have been indemnified with a girl; thus is the matter now." The people say, "All right." Then he goes to strain beer; and he calls the people. They come; he presents the girl to the people to be examined (whether it is a sufficient pay). And they consent, saying, "Very well, we are friends now."

They go away, the cows are brought, and the girl is recognised by them.

[A man has married somebody's daughter; after some time the girl, his wife, dies; now the father of the girl has to return part of the dowry which has been paid to him for his daughter. But in the meantime the father of the deceased wife has died too, and his eldest son has become his heir. The husband of the dead wife goes to this man, the brother of his dead wife, and wants his cattle back. But this man denies knowing anything about the matter, pretending his father did not tell him before his death. They therefore go before the king, who decides: the heir has to give his brother-in- law another girl instead of the deceased one; and in return the brother-in-law is to give the heir five five head of cattle, which is about half the usual price for a wife.]

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

in the courts are of a kind which in the past were mere matters of convention and usage and could not be defined as law even in the most extended definition of that term. The tendency is for the most intimate personal relationships to be governed by legal processes. This is a feature of the Nilotic world under the influence of modern administration which, while present among the Shilluk, is even more marked among Nuer and Dinka. There is a danger in this, because intervention in almost every sphere of human activity may tend to inhibit the normal readjustments which might otherwise naturally emerge to meet changing conditions. It is therefore all the more necessary to record something of present practice for comparison in later years.

The vast majority of cases which appear before the courts concern kinship obligations, marital relationships and the violation of rights in women. This article is therefore largely a description of the normal processes of marriage: the payment and distribution of bridewealth, divorce, and the infringement of legal rights in women. It is also in the nature of a commentary on previous articles published by Mr. M. E. C. Humphrey and myself[1] on the subject of kinship and social organization among the Shilluk. From time to time reference is made to Nuer and Dinka institutions by way of comparison.[2] A few examples of actual disputes as heard and recorded in the Shilluk Courts are given in the text.

Shilluk Social Structure

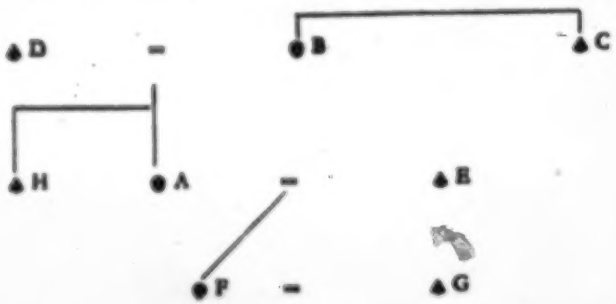
Shilluk society is divided into 'provinces', 'divisions' (*lak*), and 'settlements' (*padi*). These are territorial and political segments, but it is really only the settlement which has any permanent political significance. Each settlement has a common territory, the boundaries of which run at approximately right angles to the river. Such territory includes a section of the highland ridge which runs roughly parallel to the Nile and on which the permanent dwelling-houses and cattle-byres are built; a section of the river front (*tuic*) which provides green grazing for the cattle when the river drops, and finally a more extensive section of the hinterland (*wad*) which is subjected to varying degrees of rain-flooding during the wet season but is dry and waterless for the rest of the year. Each type of land is essential for pastoral and agricultural activities according to the season, and the territorial segmentation of Shilluk country could not be arranged otherwise.

A settlement is an economic, political, and social unit, but is not a kinship unit since it contains representative lineages of several of the many Shilluk clans. Within the settlement there is, however, a tendency—not always effective for purely topographical reasons—for each lineage to occupy its own 'village'. Each village (*pur*) is made up of a number of 'hamlets' (also *pur*: pl. *nyer*) which comprise several domestic units (*gol*), each such unit consisting of a group of dwelling-huts (*ot*) occupied by a man, his wives, and children. The village is therefore also a kinship unit and, as a general rule, the closer the territorial proximity, the closer the kinship relationship. Clans (described by giving the name of the founder with the suffix *kwa*, meaning 'descendants of') are patrilineal descent groups which are theoretically exogamous, though separation in space, coupled with considerable distance of relationship within the kinship structure, may allow modifications of this rule. The

[1] *Sudan Notes and Records*, vol. xxiv, 1941.

[2] The reader may consult the works of Professor Evans-Pritchard on the Nuer. The Dinka are also well documented.

of the bride. Among the Shilluk no such obligation exists except in the form of a recognized debt, nowadays enforceable in the Courts, which is dependent on the number of cattle which remain outstanding in the bridewealth of the bride's mother.



Thus, in the diagram, from the bridewealth paid by *E* for *A*, no portion will be set aside for *C*, unless the full bridewealth of ten head of cattle was not paid by *D* on his marriage to *B*. Since few Shilluk can afford to hand over ten head of cattle at once, and because there have been periods when there were few cattle to pay, this is the source of much litigation in the courts. At the same time, such debts are not carried forward a further generation. Thus *C* could not claim cattle outstanding from *B*'s marriage on the marriage of *F*, though *H* might do so from the marriage of *A* to *E*.

The pattern of distribution among paternal kinsmen of the bride is relatively simple, which is perhaps natural when bridewealth stands at so low a figure. If alive, the bride's father's father should receive one cow (which would go to his sons by another wife); the bride's father's brothers (her paternal uncles) and even his half-brothers are also entitled to a share. Speaking in conventional terms only, Shilluk say that where a full brother (uterine) gets two cows, a half-brother only gets one. In fact none of them are likely to get anything more than a sheep or a goat, for if a man has many brothers and half-brothers there would be little or no cattle left for the bride's father or his sons. Distribution is usually dictated by circumstances prior to the marriage and the pattern of previous bridewealth distributions which create reciprocal rights. From an analysis of some fifty Shilluk marriages, my impression is that this form of distribution is quoted as a convention only and is rarely if ever followed now. As among other Nilotes, uterine and half-brothers within one domestic group are expected to marry in strict order of age. A man will generally expect to marry with the cattle brought in by the marriage of his younger uterine sister, if he has one, and, after any deductions which may be necessary to complete the bridewealth payments of the bride's mother and the fulfilment of other debts which may be pressing, he will probably get all the remaining cattle. Though large numbers of sheep and goats[1] are brought in by the marriage, these are not distributed among the bride's paternal kinsmen according to definite claims, nor are they regarded as paid to meet claims which could be interpreted as a survival from times when the

[1] The average seems to be somewhere between fifteen and thirty.

8:Howell E-4.5 (1937, 1948) 1953 FJ23 Shilluk FJ23

Shilluk were perhaps more prosperous cattle-owners and the rates of bridewealth were higher.

There is in fact no evidence that the number of cattle paid as bridewealth was ever higher than ten, though it may have been so in the era preceding Turkish times. During the *Mahdia*, and for some time after, when the Shilluk had even less cattle than they have now, the transfer of more than two head as bridewealth seems to have been exceptional. But in the more prosperous period which followed, when cattle increased, there was an aftermath of claims dating back to marriages contracted at an earlier date. Some of these claims were upheld in the Courts established by the Government; a procedure which no doubt fostered the belief that the rate of ten head of cattle was unalterable and amounted to the enforcement of obligations which would not otherwise have been honoured. Latterly, the Administration has made attempts to reduce the bridewealth rate. At times in recent years, presumably after epidemics which have sometimes nearly halved the cattle population in the course of twelve months, ten head of cattle as bridewealth has been excessive, with varying results all naturally considered undesirable by the Administration. First, there has been a marked increase in litigation over bridewealth claims. Young men, having started the processes of marriage and made some initial payments of cattle, have then absconded with their brides and refused to honour further obligations. Second, since suitable husbands with sufficient cattle are not to be found, Shilluk girls, unable to marry the men of their choice, in an age when some degree of emancipation has been the result of alien government, tend to drift into the towns as concubines and prostitutes.[1] This process has an equally undesirable corollary. The young men, unable to marry, are more inclined to illicit love affairs, with the result that adultery has increased with a consequent rise in litigation. Finally, the Shilluk have taken to marrying their daughters to Nuer or Dinka who are easily able to find the ten head of cattle required. This process, though not necessarily undesirable in itself, has the effect of aggravating the position, because Shilluk men find it even harder to acquire wives. Without this absorption of Shilluk girls by intermarriage with other tribes or by the process of detribalization, their guardians might be prepared to accept smaller numbers of cattle as they undoubtedly did during the impoverished times of the *Mahdia*.

There have been many discussions, recorded in Government files, of the necessity for reducing the amount of bridewealth and it is clear that Shilluk chiefs and notables have themselves been acutely aware of the need to do so. Yet, despite resolutions made at Shilluk Council meetings, no alteration has in fact occurred.

Divorce and the Dissolution of Marriage

Divorce laws among the Shilluk are, in principle though not in detail, similar to those current among other Nilotic tribes. We must here distinguish between what may be called 'active divorce', when both parties are still living, and 'dissolution of legal union', which sometimes follows the death of the wife.

[1] Encouraged perhaps by the removal of customary deterrents. The 10th meeting of the Shilluk Council (1935) records: 'Chiefs are warned that the following customary "punishments" for a woman are forbidden and will be followed by imprisonment:
(1) Tying her up in a net and half drowning her.
(2) Tying her up outside at night for the mosquitos to bite her.
(3) Smoking her in a closed up house
(4) Sticking thorns up her finger nails.
The Government does not object to the lawful guardian of a woman or a girl giving her reasonable correction with the palm of his hand, or a light whip, but beating with a stick is also forbidden'

17: Pumphrey G-5 (1934-1938) 1941
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awarded the return of his cattle in full together with the custody of the children. The only cases where divorce may be said to result from an act of the parties is where the cattle have not yet fully been paid and the wife is in consequence still in her own village. In this case if the wife's *gol* despair of the full bride wealth ever being paid they may call off the marriage and marry her to another. In this case the first husband must be repaid the equivalent of the cattle paid by him and this repayment should be made a first charge on the new bride wealth. Deductions will be made here also for children born, for even in such cases the children will go to the husband, provided always that the proffered sheep has been accepted.

If the wife had produced sufficient children to wipe off the whole bride wealth the husband will be entitled to receive nothing upon termination of the marriage, except that as has been said if the marriage has been broken through the wife's bad behaviour the husband may be awarded the return of at least a part.

Until about 1910 upon a breach of marriage the wife's *gol* had to return not only all the identical cattle paid which were still living but also all their living offspring, quite irrespective of their having passed lawfully into the possession of others. Thus divorce produced a string of litigation horrible to imagine. This state of affairs still persists with some of the Dinka of Equatoria Province. It may have the social merit of making divorce even more unpleasant in its consequences for all concerned, but it possesses also many obvious disadvantages which led to the change made by the Resident of the Shilluk in about 1910. Thereafter equivalent cattle were to suffice and offspring born after payment were not reclaimable. This change has been accepted by the Shilluk though there are still cases where reactionary chiefs go by the old rules. The change had the effect of rendering cattle negotiable instruments.

Compensatory Payments in Sexual Offences.

The generic word for cattle payments in respect of sexual offences is *kwor*. *Kwor* is payable to the *gol* of the woman concerned if she is unmarried or still living with her own *gol* and to the husband if she is

29:Dempsey M-5 (1940-1954) 1955
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admire on account of its ingenuity and plausibility, will bring forward a cloud of witnesses to support his statements and with an air of 'that's my story and it's sticking to me' implicitly challenge the court to disprove it or his opponent to go one better. And if perchance his version of the facts of the case is shown to be the reverse of reality and his witnesses are confounded and made to contradict one another, no one is shocked at such blatant falsehood; the onlookers rather are disgusted at the poor show he has put up and at the poor staff work which has permitted the witnesses to be caught out.

Most of the cases which are brought before the native courts are concerned with the ownership of cattle. They are usually claims for cows to replace the original units of a dowry which have died, or for the return of cattle which have been paid with a view to a marriage which for some reason or another has not taken place, or which, if ratified, has been broken up owing to the sterility or the unfaithfulness of the woman. Such cases are tremendously involved and intricate, and only a Shilluk well versed as he is in his tribal laws and customs can possibly follow them. For instance a Shilluk often starts paying cattle for a bride whilst she is still a child, and six or seven years must elapse before she is of marriageable age. The prospective husband may leave the country, having as it were 'staked a claim', only to return later to find that the girl's father has bestowed her on another suitor. The disappointed swain at once demands his cows back but these are beyond recall, having long since been dispersed throughout the country as parts of other dowries. There are, it is true, some cattle left of the second dowry, but no Shilluk worth his salt will easily part with cattle which have once come into the family byre in prompt settlement of a mere debt. So the father puts the angry man off with soft words and fair promises, and then another spanner is thrown into the works; the daughter is ignominiously returned for some reason or other and suitor number two requires that his dowry be returned. Father hopefully offers the rejected daughter to her former suitor,

29:Dempsey M-5 (1940-1954) 1955
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691 but he now makes it plain that he wouldn't have her as a
583 gift, and indeed has made overtures to another lady, so
422 please may he have his cattle and—just to make things a little more complicated—the calves that they have had, and can he have them at once since his new prospective father-in-law is getting a little nasty about the lack of dowry, and hinting that his daughter's affections may easily be bestowed elsewhere. 'Not quite so fast,' says number two, 'those cows are mine and mine only and quite obviously their calves are mine too, so kindly arrange for the immediate delivery of the same.' Father pours ridicule and scorn on both claimants to the calves. It is true, he admits, that both young men have some sort of a claim to cattle—which he will settle by and by when he gets a bid for his youngest daughter at present crawling round the floor—but for either of them to claim the calves is preposterous; surely they belong to him who has had all the trouble of herding the beasts; to his skill and industry in nursing the cows through the difficult time of calving is due the fact that there are any calves at all! And so the arguments and counter arguments, taunts, recriminations, insults and threats will be tossed back and forth. Tempers will rise and maybe sticks will be flourished and spears flashed. It can happen that one of the parties will work himself into a blind passion and regardless
[682] of the consequences may break his adversary's skull or thrust his spear into him, but generally, fear of reprisals from the clansmen of his opponent and the justice that will certainly be meted out to him by the white man in Malakal, should he survive long enough to be arrested, advises caution; and since none of the contestants is strong enough to take by force what he considers to be his by right, the dis-
[634] pute is eventually, albeit reluctantly, brought up before the district chief.

695 Reluctantly, I say, because the litigants know full well
693 that whoever is going to lose by the decision of the court, the judge isn't. The plaintiff may marshal his facts with unassailable logic, clothe them in masterly oratory, and present them with crystal clear lucidity. He and his witnesses may even